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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO March 18 2019
BY K. Vooxy ANALYST

7 BEFORE THE
8 MEDICAL BOARD OF CALIFORNIA
9 DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800 2017 035906

12 **Ako Alimayou Jacintho, M.D.**
13 **Healthright 360**
14 **1563 Mission Street**
San Francisco, CA 94103

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. A 70786,**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On or about February 4, 2000, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 70786 to Ako Alimayou Jacintho, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on November 30, 2019, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

5. Section 725 of the Code states:

“(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist,

1 podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech language
2 pathologist, or audiologist.

3 "(b) Any person who engages in repeated acts of clearly excessive prescribing or
4 administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of
5 not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600), or by
6 imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and
7 imprisonment.

8 "(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or
9 administering dangerous drugs or prescription controlled substances shall not be subject to
10 disciplinary action or prosecution under this section.

11 "(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section
12 for treating intractable pain in compliance with Section 2241.5."

13 6. Section 2234 of the Code, states:

14 "The board shall take action against any licensee who is charged with unprofessional
15 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
16 limited to, the following:

17 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
18 violation of, or conspiring to violate any provision of this chapter.

19 "(b) Gross negligence.

20 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
21 omissions. An initial negligent act or omission followed by a separate and distinct departure from
22 the applicable standard of care shall constitute repeated negligent acts.

23 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate for
24 that negligent diagnosis of the patient shall constitute a single negligent act.

25 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
26 constitutes the negligent act described in paragraph (1), including, but not limited to, a
27 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
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1 applicable standard of care, each departure constitutes a separate and distinct breach of the
2 standard of care.

3 “(d) Incompetence.

4 “(e) The commission of any act involving dishonesty or corruption which is substantially
5 related to the qualifications, functions, or duties of a physician and surgeon.

6 “(f) Any action or conduct which would have warranted the denial of a certificate.

7 “(g) The practice of medicine from this state into another state or country without meeting
8 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
9 apply to this subdivision. This subdivision shall become operative upon the implementation of the
10 proposed registration program described in Section 2052.5.

11 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
12 participate in an interview by the board. This subdivision shall only apply to a certificate holder
13 who is the subject of an investigation by the board.”

14 7. Section 2242 of the Code states:

15 “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022
16 without an appropriate prior examination and a medical indication, constitutes unprofessional
17 conduct.

18 “(b) No licensee shall be found to have committed unprofessional conduct within the
19 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of
20 the following applies:

21 “(1) The licensee was a designated physician and surgeon or podiatrist serving in the
22 absence of the patient’s physician and surgeon or podiatrist, as the case may be, and if the drugs
23 were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return
24 of his or her practitioner, but in any case no longer than 72 hours.

25 “(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed
26 vocational nurse in an inpatient facility, and if both of the following conditions exist:

27 “(A) The practitioner had consulted with the registered nurse or licensed vocational nurse
28 who had reviewed the patient’s records.

“(B) The practitioner was designated as the practitioner to serve in the absence of the patient’s physician and surgeon or podiatrist, as the case may be.

“(3) The licensee was a designated practitioner serving in the absence of the patient’s physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient’s records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

“(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code.”

8. Section 2261 of the Code states:

“Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct.”

9. Section 2262 of the Code states:

“Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

“In addition to any other disciplinary action, the Division of Medical Quality or the California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars (\$500) for a violation of this section.”

10. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.”

DRUG INFORMATION

11. Methadone:

Methadone hydrochloride is a synthetic opioid analgesic with multiple actions quantitatively similar to those of morphine. Methadone may be administered as an injectable liquid or in the form of a tablet, disc, or oral solution. It is a Schedule II controlled substance as defined by section 11055, subdivision (c) of the Health and Safety Code, and by Section 1308.12 (c) of Title 21 of the Code of Federal Regulations, and is a dangerous drug as defined in Business

1 and Professions Code section 4022. Methadone can produce drug dependence of the morphine
2 type and, therefore, has the potential for being abused. Methadone should be used with caution
3 and in reduced dosage in patients who are concurrently receiving other opioid analgesics.

4 12. Adderall:

5 Adderall, a trade name for mixed salts of a single-entity amphetamine product
6 (dextroamphetamine sulphate, dextroamphetamine saccharate, amphetamine sulfate,
7 amphetamine aspartate), is a dangerous drug as defined in section 4022 and a schedule II
8 controlled substance as defined by section 11055 of the Health and Safety Code. Adderall is
9 indicated for Attention Deficit Disorder with Hyperactivity and Narcolepsy. It is contraindicated
10 for patients with advanced arteriosclerosis, symptomatic cardiovascular disease, moderate to
11 severe hypertension, hyperthyroidism, known hypersensitivity or idiosyncrasy to the
12 sympathomimetic amines, glaucoma, agitated states, a history of drug abuse, and patients who
13 have taken monoamine oxidase inhibitors during or within 14 days of administration.
14 Administration of amphetamine to psychotic children may exacerbate symptoms of behavior
15 disturbance and thought disorder. Caution is to be exercised in prescribing amphetamines for
16 patients with even mild hypertension. The least amount feasible should be prescribed or
17 dispensed at one time in order to minimize the possibility of overdosage. Amphetamines have
18 been extensively abused. Tolerance, extreme psychological dependence, and severe social
19 disability have occurred. There are reports of patients who have increased the dosage to many
20 times that recommended. For Attention Deficit Disorder with Hyperactivity, only in rare cases
21 will it be necessary to exceed a total of 40 mg per day. For Narcolepsy, the usual dose is 5 mg to
22 60 mg per day in divided doses depending on individual patient response.

23 13. Dextrostat:

24 Dextrostat, a trade name for dextroamphetamine sulfate, is indicated for the treatment of
25 narcolepsy and attention deficit disorder with hyperactivity; it is an amphetamine. Amphetamines
26 have been extensively abused. Tolerance, extreme psychological dependence, and severe social
27 disability have occurred with its abuse. Dextrostat is a dangerous drug as defined in section 4022
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1 of the Code and a Schedule II controlled substance under Health and Safety Code section
2 11055(d)(1).

3 14. Hydrocodone:

4 Hydrocodone w/APAP (hydrocodone with acetaminophen) tablets are produced by several
5 drug manufacturers under trade names such as Vicodin, Norco or Lortab. Hydrocodone bitartrate
6 is semisynthetic narcotic analgesic, a dangerous drug as defined in section 4022 of the Business
7 and Professions Code, and a schedule II controlled substance and narcotic as defined by section
8 11055, subdivision (e) of the Health and Safety Code. Repeated administration of hydrocodone
9 over a course of several weeks may result in psychic and physical dependence. The usual adult
10 dosage is one tablet every four to six hours as needed for pain. The total 24-hour dose should not
11 exceed 6 tablets.

12 **FACTS**

13 15. Beginning in around 2002, Respondent undertook the care for Patient A¹, then a 28-
14 year old man, for general primary care issues, such as his obesity, occasional sinusitis and colds.
15 In June, 2009, Respondent referred Patient A for an orthopedic consultation. The orthopedic
16 physician documented a number of symptoms that were not mentioned in Respondent's chart for
17 Patient A, including that Patient A had severe low back pain, limiting his sleep and daily
18 activities, and that he had a hard time finding a comfortable position. The orthopedist reviewed a
19 lumbar series that had been done in April 2009, and found that it showed evidence of disc
20 degeneration as well as a grade 1 spondylolisthesis at the L5/S1 level. (Spondylolisthesis is the
21 forward displacement of a lumbar vertebra on the one below it and especially of the fifth lumbar
22 vertebra on the sacrum producing pain by compression of nerve roots.) An MRI done June 26,
23 2009 showed a 4 mm herniation of the L4/5 disc with crowding of right-greater-than-left
24 subarticular gutters, and 3 mm broad-based disc protrusion with mild left foraminal narrowing.

25 16. From April 2009 through September 2011, Respondent wrote prescriptions for
26 Hydrocodone, while during this same time period, Patient A also obtained prescriptions for opiate

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28 ¹ The patient in this case is referred to as Patient A for the purpose of guarding the privacy
of his surviving family. The identity of Patient A is known to Respondent.

1 medications from the orthopedic medical group and other medical providers. In October 2011,
2 the other medical providers ceased prescribing opiate medications for Patient A, and Respondent
3 fully assumed the medication management for Patient A. Respondent wrote in his chart that
4 Patient A had some question of drug-seeking behavior. Respondent wrote a note "Opiate
5 Addiction" but at some point, crossed out "Addiction" and wrote "Dependence." Respondent had
6 Patient A sign a pain contract and also had Patient A agree to allow Patient A's wife to dispense
7 all of his medications.

8 17. On November 1, 2011, Respondent prescribed methadone 10 mg to Patient A, (20
9 pills) beginning with one tablet, twice per day. Patient A reported that his pain had been reduced
10 from 8 on a scale of 10, to 4 on a scale of 10. On November 9, 2011, without any discussion in
11 the medical record to say why it was necessary, and even though Patient A reported pain relief
12 with the lower dose, Respondent doubled Patient A's methadone dose to 20 mg, twice a day.
13 Respondent recorded a cursory note of history and examination; and created a medical note that a
14 discussion of the risks and benefits of methadone was done, but the note is cursory and does not
15 detail what was explained to Patient A during this discussion. In November 2011, Patient A had a
16 nerve block procedure that "worked," but Respondent continued the methadone prescription, even
17 though Patient A had a successful nerve block. Respondent created a cursory note to continue the
18 methadone and to "see med contract." In December 2011, Respondent had a telephone call from
19 Patient A, that Respondent did not note in the medical record, in which Respondent approved
20 increasing Patient A's methadone dose to 40 mg daily. On December 28, 2011, Patient A reported
21 increased pain and sciatica, and Respondent wrote that he warned patient A not to increase his
22 dose further without medical advice, and that Patient A's wife was to dispense medications.

23 18. Patient A underwent a radio-frequency ablation procedure on January 10, 2012, after
24 which Patient A reported a resolution to his pain. However, Patient A refilled his Methadone 10
25 mg and obtained 100 pills on January 19, 2012. On January 24, 2012, Patient A expressed a
26 desire to taper off of methadone.

27 19. At the next medical visit with Respondent, on February 2, 2012, Patient A was having
28 withdrawal symptoms at 40 mg of methadone per day, and was controlling his back pain with

1 ibuprofen. Respondent prescribed clonazepam (with a note that Patient A had situational anxiety
2 over his in-laws) and again instructed Patient A to taper off of methadone. At the February 16
3 visit, Patient A reported to Respondent that he was off of methadone, but asked Respondent to
4 prescribe Adderall for anxiety and depression. Respondent did so, with a note stating that he had
5 discussed the risks and benefits of Adderall. The note is cursory and does not state in detail what
6 was discussed with Patient A. Respondent diagnosed ADD but did not utilize available tools
7 such as the Connors scale to assist in diagnosing Patient A or evaluating his need for medication,
8 and did not utilize clinical evaluative tools to assess Patient A's depression.

9 20. During an office visit on February 28, 2012, Patient A reported to Respondent that his
10 back pain had returned, and he had resumed taking 40 mg of methadone per day. Patient A also
11 requested longer acting ADD medicine, because the effect of the Adderall only lasted around 4 or
12 5 hours. The report of symptoms section of the chart reflects that Patient A had back pain,
13 depression and anxiety. Respondent prescribed and Patient A filled Dextrostat SR 15, 1 daily.
14 The methadone was continued.

15 21. Patient A's last visit was on March 20, 2012. Patient A was having problems with
16 reflux. Patient A reported symptoms of fatigue, abdominal pain, nausea, back pain, depression
17 and anxiety. Respondent prescribed medicine for the reflux, and also prescribed, and Patient A
18 filled, methadone, 10 mg., 4 pills twice per day. After filling that prescription, Patient A went
19 home and died in his sleep. Patient A died of morphine and diphenhydramine toxicity.

20 22. For the duration of Respondent's care of Patient A, culminating in the final visit of
21 March 20, 2012, Respondent displayed a lack of medical knowledge and competence.
22 Respondent did not address Patient A's significant health issues, such as his obesity, borderline to
23 mild hypertension, and other conditions indicated by his symptoms of pain, depression and
24 anxiety. Respondent maintained Patient A on methadone without adequate medical cause.
25 Despite Patient A's final visit presenting with symptoms of reflux, abnormal vital signs, and other
26 risk factors, Respondent did not reasonably consider cardiac etiologies, order an EKG, consider
27 pulmonary etiologies, order a stat complete blood count, or laboratory testing to rule out
28 conditions such as pancreatitis or hepatitis; and Respondent did not direct Patient A to go to the

1 Emergency Department based on the severity of his symptoms. Instead of addressing these
2 serious medical concerns, Respondent gave Patient A a month's supply of methadone at 80 mg
3 daily, and medicine for acid reduction. Respondent thus demonstrated an inadequate appreciation
4 for Patient A's concerns, symptoms and vital signs up to and culminating in the March 20, 2012
5 visit.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct: Gross Negligence; and/or Repeated Negligent Acts; and/or**
8 **Prescribing Without an Appropriate Medical Examination /Medical Indication; and/or**
9 **Inadequate Medical Record Keeping in the Care Provided to Patient A)**

10 23. Respondent is subject to disciplinary action under sections 2234 and/or 2234(b)
11 and/or 2234(c) and/or 2242(a) and/or 2266 in that Respondent engaged in unprofessional conduct
12 and/or was grossly negligent and/or committed repeated acts of negligence and/or failed to
13 maintain adequate medical records for Patient A. The circumstances are as follows:

14 24. Complainant incorporates the allegations in paragraphs 15 through 22, as if fully set
15 forth. Complainant alleges in addition, that after having established a pattern of prescribing
16 opiates to Patient A, in tandem with the orthopedic physician and pain specialists, even when
17 aware of their prescribing, Respondent did not take reasonable precautions of checking CURES
18 reports before prescribing for Patient A, including Patient A's last visit on March 20, 2012;
19 Respondent did not question Patient A regarding his use of other medicines; Respondent did not
20 act on or consider Patient A's past history of drug-seeking behavior; Respondent assigned the role
21 of dispensing medications to Patient A's wife without regard to Patient A's inclination to comply
22 with that safeguard; Respondent prescribed methadone on March 20, 2012 without adhering to
23 the pain medicine contract he had required from Patient A; Respondent prescribed Adderall to
24 Patient A at Patient A's request without an adequate examination or diagnosis; Respondent
25 prescribed and maintained Patient A on Dextrostat without an adequate examination or diagnosis;
26 Respondent prescribed 240 methadone tablets on March 20, 2012 without an adequate
27 examination or diagnosis; and created either modified or falsified notes by crossing out and
28 modifying portions of the medical record for the last five notes created for Patient A.

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(Unprofessional Conduct: Gross Negligence; and/or Repeated Negligent Acts; and/or Incompetence; and/or Excessive Prescribing ; and/or Prescribing Without an Appropriate Medical Examination /Medical Indication; and/or Inadequate Medical Record Keeping in the Care Provided to Patient A)

26. Complainant incorporates the allegations in paragraphs 15 through 22 and 24 as if fully set forth. The medical records do not reflect that Respondent was aware of the significant difficulties and risks associated with the use of methadone; Respondent summarily doubled the prescription dose of methadone to Patient A and then negligently maintained Patient A on an unsafe dosage of methadone (80 mg daily). Respondent's records regarding his visits with Patient A and prescribing for Patient A do not adequately explain his rationale for his prescribing of methadone to Respondent.

(Altering or Modifying Medical Record or Creating a False Medical Record)

28. Complainant incorporates the allegations in paragraphs 15 through 22, 24 and 26 as if fully set forth. Complainant additionally alleges that Respondent's medical note for the March 20, 2012 visit reflects that Respondent wrote that Patient A should go to the Emergency Department "if worsens." Respondent crossed out "if worsens" and wrote "Now" above the cross out, without dating or initialing this change. Respondent furthermore wrote (in a different pen, as established

1 by forensic examination) that he had a long discussion with the patient about the severity of his
2 symptoms and history of stricture. Respondent did not date or initial this addition to the record.


3 29. For the last five medical visits documented, Respondent wrote entries using various
4 different inks. Respondent has stated that his practice was to write additions and modifications to
5 his records the same day, however, Respondent did not initial, date, or explain the reasons for any
6 of the modifications he made to Patient A's records.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Medical Board of California issue a decision:

- 10 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 70786,
11 issued to Ako Alimayou Jacintho, M.D.;
- 12 2. Revoking, suspending or denying approval of Ako Alimayou Jacintho, M.D.'s
13 authority to supervise physician assistants and advanced practice nurses;
- 14 3. Ordering Ako Alimayou Jacintho, M.D., if placed on probation, to pay the Board the
15 costs of probation monitoring; and
- 16 4. Taking such other and further action as deemed necessary and proper.

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18 DATED: March 18, 2019
19 _____


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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